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ABSTRACT

Free elections are one of the fundamental principles of any parliamentary democracy. The constitution of the Federal Republic of Germany, the Basic Law, stipulates in its article 20(2) that "all state authority emanates from the people" who exercise that authority "by means of elections and referendums and through special legislative, executive and judicial organs." These principles are irrevocable. This booklet includes the text of the Electoral Law of the Federal Republic of Germany enacted on May 7, 1956 and material about the electoral system, electoral bodies, franchise and eligibility, preparations for elections, the polls, establishment of the election results, special regulations for by-elections and repeat elections, attaining and losing membership in the German Bundestag, and final provisions. (BZ)

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Electoral Law

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The Franchise, a Civil Right

Free elections are one of the fundamental principles of any parliamentary democracy. The constitution of the Federal Republic of Germany, the Basic Law, thus stipulates in its article 20 (2) that "all state authority emanates from the people" who exercise that authority "by means of elections and referendums and through special legislative, executive and judicial organs." These principles are irrevocable (article 79(3).

According to article 28(1), second sentence, the people must also be represented by an elected body in the Länder (states), counties and municipalities.

In the Federal Republic of Germany, the basic requirements of a democratic electoral system are determined by the constitution. Proceeding from the equal civil rights and duties of all Germans as expressed in article 33(1), the Basic Law sees the franchise as a fundamental political right which is closely related to other civil rights. The civil or fundamental rights most relevant in this connection are the right to form associations (parties) and to belong to such, freedom of speech and information, and the right of assembly.

With regard to the elections for the German Bundestag (Federal Parliament), the Basic Law contains only a few, though fundamental, principles. The choice of the electoral system and the actual procedure are regulated not by the constitution but by an "ordinary" law, the Federal Electoral Law.

Article 38 of the Basic Law, which is the basis of the Federal Electoral Law, reads as follows:

(1) The deputies to the German Bundestag shall be elected in general, direct, free, equal, and secret elections. They shall be representatives of the whole people, not bound by orders and instructions, and shall be subject only to their conscience.

(2) Anyone who has attained the age of 18 years shall be entitled to vote; anyone who has attained full age shall be eligible for election.

(3) Details shall be regulated by a federal law.

This means that every German citizen, irrespective of religion, race, education, sex, wealth or the amount of tax paid, has the right to participate in elections for the Bundestag, which according to Article 39(1), first sentence, of the Basic

Law is elected for a four-year term. Thus in the Federal Republic of Germany there is no class system of voting.

No one is obliged to vote. Those who do must be able to vote for the candidate or party list of their choice without any coercion or pressure. The elections are direct, there is no involvement of delegates or electoral colleges. They have to be conducted in secret. This freedom and secrecy of elections ist protected by the law an any violation is subject to prosecution. Each person has the same number of votes as everyone else and all votes carry the same weight – that, too, is guaranteed. Article 28(1), second sentence, of the Basic Law contains corresponding guarantees with regard to elections in the Länder, counties and municipalities.

The "active" franchise (i.e. the right to vote) and the "passive" franchise (the right to stand for election) is enjoyed by all Germans and applies to all parliamentary bodies in the Federal Republic of Germany: at federal level (German Bundestag), at Land (federal state) level (the Landtag, which in Berlin (West) is known as the "Abgeordnetenhaus" or House of Representatives, in Bremen and Hamburg as the "Bürgerschaft"), and at local level (county and town councils).

The Electoral System

A combination of first-past-the-post and proportional representation

The Federal Electoral Law of 7 May 1956 provides for elections on the basis of proportional representation and the personal election of candidates, a mixed system in which

- half of the members are elected by direct vote in 248 constituencies (i.e. on a first-past-the-post basis),
- the other 248 are elected via the lists of candidates put up by the parties in the Länder (proportional representation).

In addition to these 496 members there are 22 from Berlin (West) who, because of the reservation rights of the Allies, may not be elected direct by the city's population but by the Berlin parliament. The German Bundestag therefore has a total of 518 members.

Under this system, each eligible person has two separate votes. One, the first vote, is cast for one of the candidates in his constituency, the other, the second vote, for one of the party lists in the federal state concerned (see the specimen ballot paper on p. 9).

In the constituencies, the candidate who polls most first votes is the winner.

The second vote is given for one of the lists put up by the parties in each federal state with the exception of Berlin (West). The sequence of the candidates on the lists is fixed by the parties themselves beforehand and cannot be changed by the voter.

The Federal Electoral Committee establishes the number of seats each party is to receive on the basis of the second votes, which are therefore decisive for the election result.

Seat distribution is based on the method developed by a German mathematician (Niemeyer). It ensures that the distribution of seats corresponds exactly to the proportional distribution of votes.

The 496 seats in the Bundestag are distributed among the parties in proportion to the total number of second votes polled by them in the whole area (upper distribution). Only those parties that have polled at least five per cent of the second votes in the whole country, or who have won at least three constituency seats on the basis of first votes, can be considered. The purpose of this "safety clause" is to exclude splinter parties, thus ensuring that parliament can function properly and providing a basis for stable government.

Since the elections for the Bundestag in 1957, the qualifying parties have been the Christian Democratic Union of Germany (CDU), the Social Democratic Party of Germany (SPD), the Christian Social Union (CSU), which puts up candidates in Bavaria only, the Free Democratic Party (F.D.P.), and the Greens, who gained seats in the Bundestag for the first time in 1983.

According to the Niemeyer method, the total number of seats is multiplied by the number of second votes obtained by each party individually and the product divided by the sum total of second votes obtained by all the parties that have polled at least five per cent of the votes. First, each party receives one seat for each whole number resulting from this calculation. The remaining seats are allocated in the descending sequence of decimal fractions (see diagram on p. 00).

A second calculation is made, again according to the Niemeyer method, to determine the total number of seats established for each party at federal level to be distributed among their Land lists (lower distribution). Any seats which a party has already won directly in the constituencies are deducted from the number of seats for its Land lists. The remaining seats are filled by the candidates on the Land list in the order determined before the election. It is possible for a party to have what are known as "overhang" seats when it wins more

Stimmzettel

für die Wahl zum Deutschen Bundestag im Wahlkreis 63 Bonn am 6. März 1983

Sie haben 2 Stimmen

hier 1 Stimme
für die Wahl
eines Wahlkreisabgeordneten
(Erststimme)

1	**Prof. Dr. Ehmke**, Horst Professor für öffentliches Recht Bonn Am Römerlager 4 **SPD** Sozialdemokratische Partei Deutschlands	◯
2	**Dr. Daniels**, Hans Arzt Bonn Schmidtbonnstr. 1 **CDU** Christlich Demokratische Union Deutschlands	◯
3	**Rentrop**, Franz Friedhelm Diplom-Kaufmann Wirtschaftsprüfer Bonn-Bad Godesberg Langenbergweg 72 **F.D.P.** Freie Demokratische Partei	◯
4	**Rohde**, Volker August Wilhelm Fritz Journalist Bonn-Bauer Straßstr. 19 **DKP** Deutsche Kommunistische Partei	◯
5	**Dr. Skupnik**, Wilfried Bruno Beamter Bonn Claudiusstr. 21 **GRÜNE** DIE GRÜNEN	◯

hier 1 Stimme
für die Wahl
einer Landesliste (Partei)
(Zweitstimme)

◯	**SPD**	Sozialdemokratische Partei Deutschlands Brandt, Wischnewski, Frau Huber, Schmidt, Frau Renger	1
◯	**CDU**	Christlich Demokratische Union Deutschlands Dr. Kohl, Dr. Blüm, Frau Dr. Kliems, Vogel, Frau Hürland	2
◯	**F.D.P.**	Freie Demokratische Partei Genscher, Dr. Graf Lambsdorff, Frau Dr. Adam-Schwaetzer, Dr. Hirsch, Möllemann	3
◯	**DKP**	Deutsche Kommunistische Partei Mies, Frau Kerth, Frau Bobzien, Stumm, Frau Buchmann	4
◯	**GRÜNE**	DIE GRÜNEN Vogel, Frau Dr. Kelmer, Stratmann, Frau Nickels, Schily	5
◯	**EAP**	Europäische Arbeiterpartei Frau Zepp-La Rouche, Cramer, Frau Cramer, Schiele, Virt	6
◯	**KPD**	Kommunistische Partei Deutschlands (Marxisten-Leninisten) Braue, Deiwe, Frau Schnoor, Kuß, Frau Lenzer-Kalinka	7
◯	**NPD**	Nationaldemokratische Partei Deutschlands Schultz, Gerlach, Frau Krüger, Siepmann, Aeckerschlott	8
◯	**USD**	Unabhängige Soziale Demokraten Bornemann, Vorhagen, Thuanheidt, Bartz, Stahmeyer	9

The sample ballot slip (in this case from Constituency 63 – Bonn – 6 March 1983) shows where both the first and the second vote must be placed.

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How seats are distributed according to the Niemeyer method

No. of seats to be distributed: 31

No. of votes obtained by parties:

Party A	18,900
Party B	12,900
Party C	1,900
Party D	3,200
Total:	36,900

Party A: 18,900 × 31 : 36,900 = 15.878 = 15 + 1 = 16 seats
Party B: 12,900 × 31 : 36,900 = 10.837 = 10 + 1 = 11 seats
Party C: 1,900 × 31 : 36,900 = 1.596 = 1 + 0 = 1 seat
Party D: 3,200 × 31 : 36,900 = 2.688 = 2 + 1 = 3 seats

Total: 31 seats

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seats in the constituencies on the first vote than it is entitled to according to the result of the second-vote calculation.

On average, each constituency has 222,000 inhabitants. The Federal Electoral Law prescribes that an average population in a constituency may not be more than 33⅓per cent more or less than this average figure. This is the absolute limit for population discrepancies. If the variation is greater, the constituency boundaries have to be altered. This has often been the case.

The Franchise and Eligibility for Election

All Germans are entitled to vote in elections for the German Bundestag who on election day are at least 18 years old, have lived in the electoral area for at least three months, and have not been disqualified by judicial decision. Following the 1985 amendment of the Federal Electoral Law, the franchise has been extended to German nationals living abroad. Germans residing in a member state of the Council of Europe are now entitled to vote in elections held in the Federal Republic of Germany irrespective of how long they have been living abroad. Germans who live in other countries may vote during the first ten years from the time they leave the Federal Republic, provided they resided continuously in the federal territory, including Berlin (West), for at least three months prior to leaving the country.

Eligible to stand for parliament are all persons who have been German subjects for at least one year, are at least 18 years old, and have not been disqualified on the basis of special statutory provisions.

The minimum age for parliamentary candidates has been reduced several times since 1949. Up to the 1969 federal election, anyone aged 25 or over was eligible, but by the time of the 1972 election the age had been lowered to 21. Since the 1976 election the minimum age has been 18 in accordance with a law passed on 31 July 1974 on the basis of article 38(2) of the Basic Law.

The following table indicates the average age of members of the Bundestag at the beginning of the respective legislative term:

	Leg. term	Ave. age
1.	1949	50.0
2.	1953	50.9
3.	1957	51.8
4.	1961	52.3
5.	1965	50.9
6.	1969	49.0
7.	1972	46.6
8.	1976	47.3
9.	1980	47.0
10.	1983	48.1

Nominations, Election, Preparations

Candidates may be nominated by political parties and persons entitled to vote. Persons not members of a party may only stand for election in a constituency, in other words they cannot submit Land lists. Only parties have this right. In practice only the parties nominate candidates in federal and state elections. "Non-party" constituency nominations must have the support of at least 200 persons entitled to vote in the constituency concerned who must sign the nomination. This also applies to parties not represented in parliament. In submitting Land lists, these parties must in addition present at the most 2000 signatures of persons entitled to vote in that federal state. Party constituency and list candidates are chosen by secret ballot by the members or delegates elected by them.

Only persons on the register maintained by the local authority or having a polling card may vote. A postal ballot is possible. The date of the election for the Bundestag is fixed by the Federal President. It must be a Sunday or statutory public holiday. Article 39(1), third sentence, of the Basic Law prescribes that "the new election shall be held at the earliest 45, at the latest 47, months after the beginning of the legislative term", that is, after the first meeting of parliament, and paragraph 2 of that article says that the Bundestag must assemble at the latest on the 30th day after the election. The four-year legislative term ends when the new parliament assembles for its constituent session.

"No one", according to article 48(2) of the Basic Law, "may be prevented from accepting and exercising the office of Bundestag deputy. He may not be given notice of dismissal nor dismissed from employment on this ground." And paragraph 1 of that article reads: "Any candidate for election to the Bundestag is entitled to the leave necessary for his election campaign." This provision ensures that all candidates have equal opportunities.

Public Polling, Secret Ballot

The actual polling is organised by the local authorities and independent electoral bodies. The members of such bodies are pledged to officiate impartially and to observe secrecy.

In and at the entrance to the polling centre no one may attempt to influence voters. Votes are cast in secret. Polling is public, as is the counting of votes and the establishment of the result.

Contesting of Election Results

According to article 41 of the Basic Law, "the scrutiny of elections shall be the responsibility of the Bundestag". Complaints against a decision of the Bundestag may be lodged with the Federal Constitutional Court.

Reimbursement of Election Costs

Parties that have participated in the election on their own nomination and any independent candidates in constituencies are reimbursed from public funds for "the costs necessary to conduct a reasonable election campaign". The Parties Act of 24 July 1967 laid down that in order to qualify for reimbursement parties must poll at least 0.5 per cent of the second votes in the election area or – if no Land list has been put up – 10 per cent of the first votes in a constituency of the state concerned. The same 10-per-cent clause applies to independent candidates in the constituency.

An amount of DM 5.00 for each person entitled to vote is awarded to the parties to meet their election costs. This lump sum is distributed in proportion to the number of votes obtained by the parties.

From the second to the fourth year of a legislative term, advance payments may be made. This very limited system of public assistance for the parties, the only permissible one, has proved to be satisfactory.

After the Election

The members of the different parties in the Bundestag form parliamentary parties in order to be able to carry out their programmes effectively. The parliamentary parties are not sub-organisations of the parties themselves but are constituent parts of the parliament as a constitutional organ. They must consist of at least five per cent of the members of the Bundestag who belong to the same party or parties which, owing to the fact that they pursue the same political aims, are not in competition with one another in any federal state. Since the Bundestag has 518 members, a parliamentary party must have at least 26.

The minimum strength of a parliamentary party is consistent with the Federal Electoral Law, which says that a party must obtain five per cent of the votes or at least three constituency seats (i.e. by direct election) in order to be represented in the Bundestag. Any member who leaves his party also leaves his parliamentary party. Groups of less than 26 may be formed, as for instance if members change their parliamentary party in the course of a legislative term, but only if the Bundestag votes in favour.

In practice, a member may find himself torn between his conscience and his loyalty to the parliamentary party. Members of parliament represent the people and must therefore look after the interests of the community and not of the party, but they are expected to follow the political line of their party.

If a member causes harm to the party by breaching its principles he may be excluded, but he does not lose his seat in parliament.

In Retrospect

General and direct elections with a secret ballot were envisaged for the first time in German history in the electoral law of the North German Confederation enacted on 17 April 1867, the electoral law for the Reichstag of 31 May 1869, and the law on elections for the German Reich of 16 April 1871.

A truly democratic electoral law was established during the Weimar Republic. The way was paved by the proclamation of an election for the constituent assembly on 12 November 1918, calling for secret, direct, general elections. The electoral law of 27 April 1920 codified these principles and they were incorporated in the Reich electoral law of 6 March 1924.

The question whether the Weimar electoral system, which was conducive to Hitler's "seizure of power", as well as the unforgotten splintering of the parties in the twenties, had a big influence on the post-1945 debate on the foundations

for a new electoral law. As views differed very widely in the preparatory discussions on the Basic Law and in order not to make further modifications difficult, it was decided that the Basic Law itself should not prescribe a specific electoral system.

Prospects

"If freedom and democracy are to be strengthened and respected they need to be based first and foremost on a good electoral system". This very apt statement is contained in the preface to the report submitted in 1955 by the commission on electoral reform appointed by the Federal Minister of the Interior. The 1956 Federal Electoral Law, together with subsequent amendments, have met this requirement since they have helped considerably to preserve the parliamentary democracy of the Federal Republic of Germany. The provisions of the Electoral Law are undisputed, they are accepted by the people, and they have been upheld by the Federal Consitutional Court. The whole election procedure is relatively simple.

At the present time there seems to be no pressure for further reforms. The intensive debates of the 50s and the reform movement of 1967/68 during the "Grand Coalition" (CDU/CSU and SPD) belong to the past. The CDU/CSU-spearheaded attempt to introduce a first-past-the-post electoral system, and hence a two-party system, proved abortive. However, consideration is still being given to the possibility of enabling the electorate to have a bigger say in choosing and nominating candidates, which to date is the exclusive domain of the parties.

The Electoral Law of the Federal Republic of Germany

enacted on 7 May 1956 (Federal Law Gazette I, p. 383)

Later versions: 1 September 1975 (Federal Law Gazette I, p. 2325) and 4 August 1976 (Federal Law Gazette I, pp. 2133, 2799), last amended by the Seventh Law of 8 March 1985 to amend the Federal Electoral Law (Federal Law Gazette I, p. 521).

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* Federal Parliament

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First Chapter
Electoral System

§ 1 Composition of the German Bundestag and Principles of Franchise

(1) Subject to variations resulting from this Law, the German Bundestag shall consist of 518 Members. They shall be elected in a general, direct, free, equal and secret ballot by the Germans entitled to vote, in accordance with the principle of proportional representation combined with the personal election of candidates.

(2) Of the Members, 259 shall be elected from nominations in the constituencies and the rest from Land nominations (Land lists).

§ 2 Division of the Electoral Area

(1) The area in which this Law applies shall be the electoral area.

(2) The division of the electoral area into constituencies shall be as shown in the Annex* to this Law.

(3) Each constituency shall be divided into polling districts for the purpose of voting.

§ 3 Constituency Delimitation Commission and Division into Constituencies

(1) The Federal President shall appoint a permanent Constituency Delimitation Commission. It shall consist of the President of the Federal Statistical Office, a judge of the Federal Administrative Court, and five other members.

(2) The Commission shall have the task of reporting on population changes in the electoral area and of explaining whether it considers alterations in the delimitation of constituencies to be necessary in the light of such changes, and what alterations should be made. In its report it may submit re-delimitation proposals also for other reasons. In presenting its proposals for the delimitation of constituencies, the Commission shall bear in mind the following principles:

1. The Laender boundaries shall be respected.
2. The population of a constituency should not deviate from the average population of the constituencies by more than 25 per cent in either direction; where the deviation constitutes more than 33⅓ per cent, a re-delimitation shall be made.

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* Not attached to this translation.

3. The number of constituencies in the respective Laender should as far as possible correspond to the latter's share of the total population.
4. Each constituency should form a coherent area.
5. Wherever possible, the boundaries of municipalities, districts and towns independent of district administration should be respected.

In the determination of population figures, aliens (Section 1, subsection 2, of the Aliens Law) shall not be taken into account.

(3) The report of the Constituency Delimitation Commission shall be rendered to the Federal Minister of the Interior within one and a half years after the beginning of the legislative term of the Bundestag. The Federal Minister of the Interior shall immediately forward it to the Bundestag and shall publish it in the Federal Official Bulletin. At the request of the Federal Minister of the Interior the Constituency Delimitation Commission shall render a supplementary report; in this case the second sentence shall apply mutatis mutandis.

(4) Should Land boundaries be altered in accordance with the statutory provisions procedure in case of changes in the territory of the Laender according to Article 29 (7) of the Basic Law, the boundaries of the constituencies affected shall also be altered correspondingly. Should two or more constituencies be affected in the incorporating Land, or should an exclave of a Land be formed, the new territory shall belong to the constituency to which belongs the commune, the commune district, or the non-commune area to which it has been added.

§ 4 Votes

Each voter shall have two votes, a first vote to be cast for a Member of Parliament representing a constituency and a second vote be cast for a Land list.

§ 5 Polling in the Constituencies

In each constituency one member shall be returned to Parliament. The candidate obtaining the majority of the votes cast shall be deemed elected. Where two or more candidates obtain the same number of votes, the election shall be settled by the Constituency Returning Officer drawing lots.

§ 6 Election by Land List

(1) For the distribution of the seats to be occupied on the basis of Land lists, the second votes cast for each Land list shall be added up. In cases where a succesful candidate in a constituency is one who has been nominated in

19

accordance with § 20, subsection (3), or by a party not entitled to submit a Land list in the Land in question, the second votes of those voters whose first votes were cast for him shall be disregarded. There shall be deducted from the total number of Members of Parliament (§ 1, subsection (1)) the number of successful constituency members referred to in the second sentence above or nominated by parties which, in accordance with subsection (6) of the present Section, are not to be taken into consideration.

(2) The remaining seats pursuant to the third sentence of subsection (1) shall be distributed among the Land lists on the basis of the second votes to be taken into account according to the first and second sentences of subsection (1), as follows. The total number of seats remaining shall be multiplied by the number of second votes cast for each Land list in the election area and the product divided by the sum total of second votes for all Land lists to be taken into account. First, each Land list shall receive one seat for each whole number attributed to it. The seats then remaining shall be allocated in the descending sequence of decimal fractions resulting from the calculation according to the second sentence of this subsection. In case of equal fractions the assignment of the last seat shall be decided by the Federal Returning Offiver drawing lots.

(3) If according to the distribution described in subsection (2) a Land list that has attracted more than one half of the total number of second votes of all Land lists to be taken into account does not receive more than one half of the seats available it shall, notwithstanding the fourth and fifth sentences of subsection (2), be allocated an additional seat. The seats then remaining shall be distributed according to the fourth and fifth sentences of subsection (2).

(4) From the number of members thus arrived at for each Land list shall be deducted the number of seats won by the party in question in the constituencies of the respective Land. The remaining seats shall be filled from the Land list concerned in the order laid down therein. Candidates who have been elected in a constituency shall be disregarded in the Land list. Should more seats be assigned to a Land list than there are candidates nominated in it, these seats shall remain vacant.

(5) A party shall retain all the seats it has gained in the constituencies even if they exceed the number arrived at in accordance with subsections (2) and (3). In this event the total number of seats (§ 1, subsection (1)) shall be increased by the difference in the numbers; renewed calculation as under subsections (2) and (3) of this Section shall not take place.

(6) In distributing the seats among the Land lists, only such parties shall be taken into consideration as have obtained at least five per cent of the valid

second votes cast in the electoral area or have won a seat in at least three constituencies. The first sentence shall not apply to lists submitted by parties representing national minorities.

§ 7 Combined Lists

(1) Unless it is declared that one or more Land lists concerned are to be excluded from the combination of lists, Land lists of the same party shall be deemed to be combined.

(2) In the distribution of seats, combined lists shall be considered to be a single list in relation to the other lists.

(3) The seats assigned to a combined list shall be distributed among the Land lists concerned in accordance with § 6, subsection (2). § 6, subsections (4) and (5), shall apply mutatis mutandis.

Second Chapter
Electoral Bodies

§ 8 Organisation of Electoral Bodies

(1) Electoral bodies shall be

the Federal Returning Officer and the Federal Electoral Committee for the Electoral Area,

a Land Returning Officer and a Land Electoral Committee for each Land,

a Constituency Returning Officer and a Constituency Electoral Committee for each constituency,

an Electoral Officer and an Electoral Board for each polling district, and

at least one Electoral Officer and an Electoral Board in each constituency to establish the results of the postal ballot. The number of Electoral Boards necessary to complete the counting of the postal votes on election day shall be determined by the Constituency Returning Officer.

(2) For several neighbouring constituencies a Joint Constituency Returning Officer may be appointed and a Joint Electoral Committee formed; the order shall be made by the Land Returning Officer.

(3) To establish the results of the postal ballot, Electoral Officers and Electoral Boards need not be appointed for every constituency but for one or several municipalities or for each district in the constituency. The order shall be made by the Land Government or the agency designated by it.

§ 9 Appointment of Electoral Bodies

(1) The Federal Returning Officer and his Deputy shall be appointed by the Federal Minister of the Interior; the Land Returning Officers, Constituency Returning Officers and Electoral Officers and their Deputies shall be appointed by the Land Government or the agency designated by it.

(2) The Electoral Committees shall be composed of the Returning Officer as Chairman and of six persons entitled to vote appointed by him as Committee Members. The Electoral Boards shall be composed of the Electoral Officer as Chairman, of his Deputy and of another three to five persons entitled to vote appointed as Board Members by the Electoral Officer; the Land Government or the agency designated by it may order that the members of the Electoral Board shall be appointed by the local authority and the members of the Electoral Board for the establishment of the results of the postal ballot by the Constituency Returning Officer, in the event of an order pursuant to § 8 (3), by the local authority or county authority alone or in consultation with the Electoral Officer. In appointing Committee Members and Board Members, regard shall as far as possible be paid to the political parties represented in the polling district concerned.

(3) No person may be a member of more than one electoral body. Candidates standing for election, spokesmen for nominations and their deputies may not be appointed to membership of an electoral body.

§ 10 Electoral Committees and Electoral Boards

The Electoral Committees and Electoral Boards shall meet and reach their decisions in public session. Decisions shall be taken by majority vote; in the case of a tie the Chairman shall have the casting vote.

§ 11 Honorary Posts

The Members of the Electoral Committees and the Members of the Electoral Boards shall perform their functions in an honorary capacity. Every person entitled to vote shall be bound to accept this honorary post if it is offered to him or her. The honorary post may only be refused on substantial grounds.

Third Chapter
Franchise and Eligibility

§ 12 Franchise

(1) All Germans within the meaning of Article 116 (1) of the Basic Law shall be entitled to vote, provided that on the day of the election they

1. have reached the age of 18 years,
2. have had a domicile or have otherwise been permanently resident for at least three months within the area of application of this Law, and
3. are not disqualified from voting under § 13.

(2) Also entitled to vote, provided they fulfil the other conditions, are Germans within the meaning of Article 116 (1) of the Basic Law who, on the day of the election,

1. as civil servants, soldiers, employees and workers in the public service are domiciled or otherwise permanently resident outside the area of application of this Law by order of their employer, and the members of their households,
2. reside in the territories of the other member states of the Council of Europe and, prior to leaving the Federal Republic, have since 23 May 1949 had a domicile or otherwise been permanently resident for at least three months continuously within the area of application of this Law,
3. reside in other territories outside the area of application of this Law, provided that, prior to leaving that area, they have had a domicile or otherwise been permanently resident for at least three months continuously within the area of application of this Law, and provided that no more than ten years have elapsed since they left that area. This applies mutatis mutandis to seamen on vessels not flying the Federal Flag, as well as the members of their households.

Upon their return to the area of application of this Law, the period of three months provided for in subsection (1) No. 2 above shall not apply.

(3) For the purposes of this Law, a domicile shall be any enclosed space which is used for dwelling or sleeping. Caravans and house-boats, however, shall only be considered to be domiciles if they are not or only occasionally moved.

(4) To the extent that any of the persons mentioned hereunder does not have or has not had a domicile in the area of application of this Law, the following shall be considered a domicile within the meaning of subsection (1) No. 2 or subsection (2) Nos. 2 and 3:

1. for seamen and the members of their households, the ship occupied by them if the ship is entitled to fly the Federal Flag under the Flag Law published in the Federal Law Gazette III, No. 9514-1, last amended by article 3 of the law of 10 May 1978 (Federal Law Gazette I, p. 613),
2. for boatmen in inland navigation and the members of their households, the vessel occupied by them if the vessel is enrolled in a ship's register within the area of application of this law,

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3. for persons serving a term of imprisonment imposed by a court of law as well as for other persons accommodated in an institution, the detention establishment or the respective institution.

(5) In calculating the three-month period pursuant to subsection (1) No. 1 and subsection (2) Nos. 2 and 3, the day on which the domicile is occupied or the residence is begun shall be included.

§ 13 Disqualification from Voting

A person shall be disqualified from voting if

1. he or she does not possess the right to vote owing to a judicial decision,
2. he or she has been legally incapacitated or is under guardianship for reasons of mental deficiency unless the person furnishes proof in the form of a certificate from the guardianship court that the guardianship has been ordered with his or her consent,
3. he or she is accommodated in a psychiatric hospital under an order pursuant to § 63 in conjunction with § 20 of the Penal Code.

§ 14 Excercising the Right to Vote

(1) Only such persons as are entered in a voters' register or have a polling card shall be permitted to vote.

(2) Anyone entered in a voters' register may only vote in the polling district in the voters' register of which he or she is entered.

(3) Anyone possessing a polling card may vote in the constituency in which the polling card was issued.

a) by casting his or her vote in any polling district of this constituency, or

b) by postal ballot.

(4) Each person entitled to vote may vote only once and must do so personally.

§ 15 Eligibility to Stand for Parliament

(1) There shall be eligible to stand for parliament only such persons as, on election day,

1. have been Germans within the meaning of Article 116 (1) of the Basic Law for at least one year, and
2. have reached the age of 18 years.

(2) A person shall be ineligible to stand for parliament if

1. he or she is disqualified from voting under § 13,
2. he or she has been deprived by judicial decision of eligibility to stand for parliament or of qualification to hold public office; or
3. without possessing German citizenship, he or she is a German within the meaning of Article 116 (1) of the Basic Law and has attained this legal status by renouncing German citizenship under the Law for the Regulation of Questions of Citizenship of 22 February 1955 (Federal Law Gazette I, p. 65).

Fourth Chapter
Preparations for the Election

§ 16 Election Day

The Federal President shall decide the day on which the general election is to take place (election day). The election day must fall on a Sunday or on a statutory public holiday.

§ 17 Voters' Register and Polling Cards

(1) The local authorities shall maintain a register of persons entitled to vote for each polling district. The voters' register shall be laid out on display for the general public from the twentieth to the fifteenth day before the election.

(2) A person entitled to vote who is prevented from casting his or her vote in the polling district in the voters' register of which he or she is entered, or has not been entered in the voters' register for reasons outside his control, shall be issued with a polling card on application.

§ 18 Right to Nominate Candidates, Notification of Participation

(1) Nominations of candidates may be submitted by parties and, in accordance with § 20, by persons entitled to vote.

(2) A party which has not been continuously represented in the Bundestag or in a Landtag* since the last election to the one or the other by at least five members nominated by the party itself may only submit a nomination as a party if it has announced its intended participation in the election to the Federal Returning Officer in writing not later than the seventy-fifth day before the elec-

* Land Parliament

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tion and has been recognised as a party by the Federal Electoral Committee. Such notification must include the name to be used by the party in the election. It must be personally signed by at least three members of the national executive, including the chairman or his deputy. If a party does not have a national executive, the management committee of the party's principle organisation shall function in its place. The party's written statutes and written programme as well as proof that the management committee has been duly appointed in accordance with the statutes shall accompany the notification.

(3) The Federal Returning Officer shall examine the notification pursuant to subsection (2) immediately upon receiving it. If it is incomplete he shall inform the executive or management committee without delay, requesting that the missing information be furnished. After the time limit for the submission of such notification has expired, only deficiencies in otherwise valid notifications may be rectified. A notification shall not be deemed valid if

1. the form or time-limit prescribed in subsection (2) has not been complied with,
2. the name of the party has not been included,
3. the valid signatures necessary pursuant to subsection (2) and the documents to be submitted with the notification are missing, unless such documents cannot be submitted in time as a result of circumstances for which the party cannot be held responsible,
4. the members of the executive or the management committee have not been properly designated, with the result that the names of the persons concerned have not been determined. Once a decision recognising a party has been taken, any further action to remove deficiencies shall be ruled out. The party executive or management committee may appeal to the Federal Electoral Committee against decisions by the Federal Returning Officer pertaining to the removal of deficiencies.

(4) The Federal Electoral Committee shall establish not later than the fifty-eighth day before the election the following, which shall be binding on all electoral bodies:

1. which parties have been continuously represented in the Bundestag or in a Landtag since the last election to the one or the other by at least five members nominated by the party itself, and
2. which associations, having announced their participation pursuant to subsection (2), shall be recognised as parties for the election.

(5) A party may submit only one constituency nomination for each constituency and only one Land list for each Land.

§ 19 Submitting Nominations

Constituency nominations shall be submitted in writing to the Constituency Returning Officer, Land lists to the Land Returning Officer, not later than 6 p.m. on the fifty-second day before the election.

§ 20 Content and Form of Constituency Nominations

(1) A constituency nomination may only contain the name of one candidate. Each candidate may only be named in one constituency and there only in one nomination. A person may only be nominated if he or she has given his or her consent in writing; such consent shall be irrevocable.

(2) Constituency nominations by parties must bear the personal and handwritten signatures of the executive committee of the Land party organisation or, where such Land organisations do not exist, the personal and handwritten signatures of the executive committees of the next lower regional organisations (§ 7, subsection (2), of the Law on Political Parties) in whose area the constituency is situated. Constituency nominations by parties referred to in § 18, subsection (2) above must in addition bear the personal and handwritten signatures of at least 200 persons entitled to vote from the constituency; proof that the signatories are entitled to vote must be furnished with the nomination. The requirement to present 200 signatures shall not apply to constituency nominations by parties representing national minorities.

(3) Other constituency nominations must bear the personal and handwritten signatures of at least 200 persons entitled to vote from the constituency concerned. Subsection (2), second sentence, shall apply mutatis mutandis.

(4) Constituency nominations by parties must contain the name of the party submitting them as well as any shortened form of its name if such form is used by it; other constituency nominations must show a distinctive code word.

§ 21 Selection of Party Candidates

(1) A person may only be named as candidate of a party in a constituency if he or she has been selected for this purpose in an assembly of party members for the selection of a constituency candidate or in a special or general assembly of party representatives. An assembly of party members for the selection of a constituency candidate shall be an assembly of members of the party who at the time of their meeting are entitled to vote in the election to the Bundestag within their constituency. A special assembly of party representatives shall be an assembly of representatives elected by such an assembly of party members

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from their own ranks. A general assembly of party representatives shall be an assembly appointed in general by such an assembly of party members from their own ranks in view of forthcoming elections, in accordance with the statutes of the party concerned (§ 6 of the Law on Political Parties).

(2) Where districts and towns independent of district administration comprise several constituencies, the candidates for those constituencies of which the area does not intersect the boundary of the district or of the town independent of district administration may be selected in a joint assembly of members or representatives.

(3) The candidates and the representatives for the assemblies of representatives shall be selected by secret ballot. Elections may take place at the earliest thirty-two months, in the case of the representatives' assembly at the earliest 23 months, after the beginning of the legislative term of the German Bundestag; this shall not apply if the term ends prematurely.

(4) The executive committee of the Land party organisation or, where such Land organisations do not exist, the executive committees of the next lower regional organisations (§ 7, subsection (2), of the Law on Political Parties) in whose area the constituency is situated, or another body provided for this purpose in the party's statutes, may object to the decision of an assembly of members or representatives. If such objection is raised, the ballot shall be repeated. Its result shall be final.

(5) Further details regarding the election of representatives for the representatives' assembly, the convening and the quorum of the assembly of members or representatives, as well as the procedure for the selection of the candidate, shall be regulated by the parties concerned in accordance with their statutes.

(6) One copy of the record of the selection of the candidate, with details as to the place and time of the assembly, the form of the invitation, the number of members attending and the result of the ballot, shall be submitted together with the constituency nomination. In so doing, the chairman of the assembly and two participants designated by it shall give to the Constituency Returning Officer an assurance in lieu of an oath to the effect that the selection of the candidates has taken place by secret ballot. The Constituency Returning Officer shall have competence to administer such an assurance in lieu of an oath; he shall be deemed to constitute an authority within the meaning of § 156 of the Penal Code.

§ 22 Spokesmen

(1) In every constituency nomination a spokesman and a deputy should be designated. If such designation is not made, the first signatory shall be considered to be the spokesman and the second to be his deputy.

(2) Unless provided otherwise in this Law, only the spokesman and his deputy, each for himself, shall be entitled to make and receive binding statements concerning the constituency nomination.

(3) The spokesman and his deputy may be removed from their posts and replaced by others through a written statement addressed to the Constituency Returning Officer by the majority of the signatories of the constituency nomination.

§ 23 Withdrawal of Constituency Nominations

A constituency nomination may be withdrawn by a joint written statement of the spokesman and his deputy, provided no decision has yet been reached as to its acceptance. A constituency nomination signed by at least 200 persons entitled to vote may also be withdrawn by the majority of the signatories through a statement bearing their personal and handwritten signatures.

§ 24 Alteration of Constituency Nominations

After the expiration of the period for submitting nominations, a constituency nomination may be altered only through a joint statement in writing by the spokesman and his deputy and only if the candidate has died or has become ineligible to stand for parliament. The procedure laid down in § 21 need not be adhered to and the signatures as provided in § 20, subsections (2) and (3), shall not be required. After a decision has been made on the acceptance of a constituency nomination (§ 26, subsection (1), first sentence), alterations of any kind shall be excluded.

§ 25 Remedying Errors and Defects

(1) The Constituency Returning Officer shall examine constituency nominations immediately after their receipt. If he discovers errors or defects in a constituency nomination he shall immediately notify the spokesman and demand that such errors or defects as can be corrected be remedied in due time.

(2) After expiration of the period for submitting, nominations, errors or defects may only be remedied in nominations which are otherwise valid. A nomination shall not be valid if

1. the form and period prescribed under § 19 have not been adhered to,
2. the valid signatures required pursuant to § 20 (2), first and second sentences, and subsection (3), together with proof that the signatories are entitled to vote are missing, unless such proof cannot be furnished in time due to circumstances for which the person entitled to make the nomination is not responsible,
3. in the case of a party nomination, the name of the party has been omitted, the necessary recognition of party status under § 18, subsection (2) above has been refused, or the evidence required under § 21 has not been furnished,
4. the candidate is inadequately described, so that his or her identity cannot be established,
5. the candidate's written consent is lacking.

(3) After the decision has been made on the acceptance of a constituency nomination (§ 26, subsection (1), first sentence), no remedying of errors and defects shall be permissible.

(4) The spokesman may appeal to the Constituency Electoral Committee against instructions given by the Constituency Returning Officer in proceedings for the remedying of errors and defects.

§ 26 Acceptance of Constituency Nominations

(1) The Constituency Electoral Committee shall decide on the acceptability of constituency nominations on the forty-fourth day before the election. It shall reject nominations if they

1. are submitted too late, or
2. do not meet the requirements established by this Law and by the Federal Election Regulations, unless laid down otherwise in these provisions. The decision shall be announced at the meeting of the Constituency Electoral Committee.

(2) If the Constituency Electoral Committee rejects a constituency nomination an appeal may be made to the Land Electoral Committee within three days after the announcement of the decision. The spokesman for the constituency nomination, the Federal Returning Officer, and the Constituency Returning Officer shall be entitled to appeal. The Federal Returning Officer and the Constituency Returning Officer may also appeal against a decision by which a constituency nomination is accepted. The persons concerned attending the appeal proceed-

ings shall be heard. The decision on the appeal must be taken not later than the thirty-eighth day before the election.

(3) The Constituency Returning Officer shall publish the accepted constituency nominations not later than the thirty-fourth day before the election.

§ 27 Land Lists

(1) Land lists may only be submitted by political parties. They must bear the personal and handwritten signatures of the executive committee of the Land party organisation or, where Land organisations do not exist, those of the executive committees of the next lower regional organisations (§ 7, subsection (2), of the Law on Political Parties) existing within the territory of the Land; moreover, in the case of the political parties mentioned in § 18, subsection (2), they must be so signed by one per thousand of the persons entitled to vote in the Land at the last elections to the Bundestag, but by not more than 2,000 persons entitled to vote. When submitting the Land lists proof that the signatories supporting a nomination by one of the parties referred to in § 18, subsection 2, are entitled to vote must also be furnished. The requirement to present additional signatures shall not apply to Land lists of parties representing national minorities.

(2) Land lists must show the name of the party submitting them as well as any shortened form of its name if such form is used by it.

(3) The names of the candidates must be listed in recognisable sequence.

(4) A candidate may only be nominated in one Land, and there only in one Land list. Only such persons as have given their consent in writing may be named in a Land list; such consent shall be irrevocable.

(5) § 21, subsections (1), (3), (5) and (6), as well as §§ 22 to 25 shall apply mutatis mutandis, provided that the assurance in lieu of an oath to be given under § 21, subsection (6), second sentence shall also cover an assurance to the effect that the sequence of the names of candidates shown in the Land list has been laid down by secret ballot.

§ 28 Acceptance of the Land Lists

(1) The Land Electoral Committee shall decide on the acceptance of the Land lists on the forty-fourth day before the election. It shall reject Land lists if they

1. are submitted too late, or
2. do not meet the requirements established by this Law and by the Federal Election Regulations, unless laid down otherwise in these provisions.

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If a list fails to meet the requirements in respect only of individual candidates, their names shall be deleted from the Land list.

(2) If the Land Electoral Committee rejects a Land list wholly or in part, an appeal may be made to the Federal Electoral Committee within three days after the announcement of the decision. The spokesman for the Land list and the Land Returning Officer shall be entitled to appeal. The Land Returning Officer may also appeal against a decision by which a Land list is accepted. The persons concerned attending the appeal proceedings shall be heard. The decision on the appeal must be taken not later than the thirty-eighth day before the election.

(3) The Land Returning Officer shall publish the accepted Land lists not later than the thirty-fourth day before the election.

§ 29 Exclusion from the Combination of Land Lists

(1) Exclusion from the combination of Land lists (§ 7) shall be notified to the Federal Returning Officer by the spokesman for the Land list concerned and his deputy by means of a joint written statement not later than 6 p. m. on the twentieth day before the election.

(2) The Federal Electoral Committee shall decide on the statements under subsection (1) above not later than the sixteenth day before the election. § 28, subsection (1), second sentence, shall apply mutatis mutandis.

(3) Not later than the fifteenth day before the election, the Federal Returning Officer shall publish the combinations of lists and the Land lists for which a statement has been made under subsection (1) above.

§ 30 Ballot Papers

(1) The ballot papers, their envelopes and the envelopes for the postal ballot (§ 36, subsection (1)) shall be officially manufactured.

(2) The ballot paper shall contain

1. for the constituency elections, the names of the candidates of the accepted constituency nominations; additionally, in the case of constituency nominations by parties, it shall show the names of these parties as well as any shortened form of their names if such form is used by them, while in respect of other constituency nominations it shall, moreover, bear the distinctive code word.

2. for elections by Land lists, the names of the parties and any shortened form of their names if such form is used by them, as well as the names of the first five candidates on the Land lists accepted.

(3) The order of the Land lists of parties which were represented in the last Bundestag shall be determined by the number of second votes which each obtained at the last Bundestag election in the Land concerned. The remainder of the Land lists shall follow in the alphabetical order of the names of the parties. The order of the constituency nominations shall be the same as the order of the corresponding Land lists. Other constituency nominations shall follow in the alphabetical order of the names of the parties or of the code words.

Fifth Chapter
The Poll

§ 31 Public Character of the Poll

Polling shall be public. The electoral board my eject from the polling station any persons causing a disturbance.

§ 32 Inadmissible Electioneering

(1) In and at the entrance to the building in which the polling station is located it shall be forbidden to influence voters in any way by word, sound, writing or image or by collecting signatures.

(2) The results of opinion polls after votes have been cast may not be published before the expiry of the time prescribed for the election.

§ 33 Preserving the Secrecy of the Ballot

(1) Measures shall be taken to ensure that the voter cannot be observed while marking his or her ballot paper and placing it in the envelope. Ballot boxes for the reception of the envelopes must be such that they ensure the preservation of the secrecy of the ballot.

(2) A voter who is illiterate or who is prevented by a physical handicap from marking the ballot paper, from placing it in the envelope, from handing the envelope over to the Electoral Officer or from placing it into the ballot box himself or herself, may be aided by a person of his or her confidence.

§ 34 Casting the Vote by means of Ballot Papers

(1) Votes shall be cast by using official ballot papers in official envelopes.

(2) The voter shall

1. cast his or her first vote by marking the ballot paper with a cross or other sign clearly indicating for which candidate the vote is intended, and
2. cast his or her second vote by marking the ballot paper with a cross or other sign clearly indicating for which Land list the vote is intendend.

§ 35 Casting the Vote by means of Voting Machines

(1) In order to facilitate the casting and counting of votes, voting machines equipped with independent registers may be used instead of ballot papers, envelopes and ballot boxes.

(2) Voting machines within the meaning of subsection (1) above must guarantee the secrecy of voting. They must be officially licensed in their design to be used at elections to the Bundestag for individual elections or on a general scale. The Federal Minister of the Interior shall decide on the licensing of a voting machine on the application of its manufacturer. The use of an officially licensed voting machine shall be subject to approval by the Federal Minister of the Interior. Such approval may be pronounced in respect of individual elections or with general effect.

(3) The Federal Minister of the Interior shall be authorised to issue detailed regulations by statutory ordinance not requiring the approval of the Bundesrat* concerning:

1. the conditions for the official licensing of the design of voting machines as well as for the withdrawal and the revocation of the licence,
2. the procedure governing the official licensing of the design,
3. the procedure governing the examination of a voting machine as to the type corresponding to the officially licensed design,
4. the public testing of a voting machine prior to its use,
5. the procedure governing the official approval of the use as well as the withdrawal and the revocation of the approval,
6. the particularities contingent upon the use of voting machines in relation to the election.

In the cases provided for in Nos. 1 and 3, the statutory ordinance shall be issued in agreement with the Federal Minister of Economics.

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* Laender Chamber

(4) As regards the operation of a voting machine, § 33, subsection (1), first sentence, and subsection (2), shall apply mutatis mutandis.

§ 36 Postal Ballot

(1) If voting by postal ballot, the voter shall send in a sealed postal ballot envelope to the Constituency Returning Officer of the constituency in which his or her polling card was issued:

a) his or her polling card and,

b) in a separate sealed envelope, his or her ballot paper, early enough to ensure that the postal ballot letter will arrive not later than 6 p.m. on election day. § 33, subsection (2), shall apply mutatis mutandis.

(2) On the polling card the voter or the person of his or her confidence shall give an assurance in lieu of an oath to the Constituency Returning Officer that the ballot paper has been marked either personally or in accordance with the declared intent of the voter. The Constituency Returning Officer shall have competence to administer such an assurance in lieu of an oath; he shall be deemed to constitute an authority within the meaning of § 156 of the Penal Code.

(3) In the event of an order by the Land government or by an agency designated by it pursuant to § 8, subsection 3, the place of the Constituency Returning Officer referred in subsection 1, first sentence, and in subsection 2, shall be taken by the local authority that has issued the voting cards or the administrative authority of the county in which the local authority is situated.

(4) Postal ballot letters may be posted as standard mail without any special form of despatch, free of charge, if contained in official election envelopes. If the sender chooses a special form of despatch he must pay the amount in excess of the letter rate. The Federal Government shall pay the Deutsche Bundespost the letter rate for every official election envelope forwarded by it, posted unstamped, or sent by special mail.

Sixth Chapter
Establishment of the Election Result

§ 37 Establishment of the Result in the Polling Districts

After the closing of the poll the Electoral Board shall establish how many votes have been cast in the polling district for the individual constituency nominations and Land lists.

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§ 38 Establishment of the Result of the Postal Ballot

The Electoral Board appointed for the postal ballot shall establish how many postal votes have been cast for the individual constituency nominations and Land lists.

§ 39 Invalid Votes, Rejection of Postal Ballot Letters, Rules for Establishing Invalidity

(1) Votes shall be invalid if the ballot paper

1. has not been handed over in an official voting envelope,
2. has been handed over in a voting envelope which evidently differs from the other envelopes in a manner endangering the secrecy of the ballot, or which contains a distinctly tangible object,
3. has not been officially manufactured or is valid for another constituency,
4. shows no marking,
5. does not reflect the voter's intent beyond any doubt,
6. contains any addendum or reservation.

In the cases mentioned under Nos. 1 to 4, both votes shall be invalid.

(2) Several ballot papers contained in a voting envelope shall be considered to be one ballot paper if their wording is identical or if only one of them has been marked; otherwise they shall count as one ballot paper with two invalid votes.

(3) If the voting envelope has been handed over empty, both votes shall be considered to be invalid. Where only one vote has been cast on the ballot paper, the vote not cast shall be invalid.

(4) If voting is by postal ballot, postal ballot letters shall be rejected if

1. the postal ballot letter has not arrived in time,
2. no or no valid ballot paper is enclosed in the postal ballot envelope,
3. no voting envelope is annexed to the postal ballot envelope,
4. neither the postal ballot envelope nor the voting envelope is sealed,
5. the postal ballot envelope contains several voting envelopes but not an equal number of valid polling cards bearing the prescribed assurance in lieu of an oath,
6. the voter or the person of his or her confidence has failed to sign the prescribed assurance in lieu of an oath for the postal ballot on the polling card,

7. no official voting envelope has been used,
8. a voting envelope has been used which evidently differs from the other envelopes in a manner endangering the secrecy of the ballot, or which contains a distinctly tangible object.

The senders of postal ballot letters that are rejected shall not be counted as voters; their votes shall be deemed not to have been cast.

(5) The votes of a voter having taken part in the postal ballot shall not become invalid if he dies before or on election day or is disqualified from voting pursuant to § 13.

§ 40 Decision of the Electoral Board

The Electoral Board shall decide on the validity of the votes cast and on any queries and objections arising during the poll and during the counting of votes. The Constituency Electoral Committee shall have a right of verification.

§ 41 Establishment of the Election Result in the Constituency

(1) The Constituency Electoral Committee shall establish how many votes have been cast in the constituency for the individual constituency nominations and Land lists, and which candidate has been elected Deputy for the constituency.

(2) The Constituency Returning Officer shall notify the candidate who has been elected Deputy for the Constituency, and shall invite him to state in writing within a week whether he accepts the election.

§ 42 Establishment of the Election Result for the Land Lists

(1) The Land Electoral Committee shall establish how many votes have been cast in the Land for the individual Land lists.

(2) The Federal Electoral Committee shall establish how many seats have been won by the individual Land lists and which candidates have been elected.

(3) The Land Returning Officer shall notify the elected candidates and invite them to state in writing within a week whether they accept the election.

Seventh Chapter
Special Regulations for By-elections and Repeat Elections

§ 43 By-elections

(1) A by-election shall take place

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1. if an election has not been held in a constituency or a polling district,
2. if a constituency candidate dies after the acceptance of his or her nomination but before the election.

(2) The by-election should take place not later than three weeks after the date of the general elections. The date of the by-election shall be determined by the Land Returning Officer.

(3) The by-election shall be subject to the same regulations and shall take place on the same basis as the general elections.

§ 44 Repeat Elections

(1) If an election is declared wholly or partly invalid as a result of the scrutiny proceedings, it shall be repeated as required by the respective decision.

(2) The repeat election shall be subject to the same regulations as the general elections, it shall be held with the same nominations and, provided less than six months have passed since the general elections, on the basis of the same register of voters, unless the decision reached under the scrutiny procedure shall prescribe otherwise with regard to nominations of candiates and registers of voters.

(3) The repeat election must take place not later than sixty days after the decision by which the election was declared invalid has become legally effective. Where the election has been declared only partially invalid, there shall be no repeat election if it is certain that a new Bundestag will be elected within six months. The date of the repeat election shall be determined by the Land Returning Officer or, in the case of a repeat election for the whole electoral area, by the Federal President.

(4) The election results shall be newly established on the basis of the repeat election, in accordance with the regulations laid down in the Sixth Chapter. § 41, subsection (2) and § 42, subsection (3) shall apply mutatis mutandis.

Eighth Chapter
Attaining and Losing Membership of the Bundestag

§ 45 Attaining Membership of the Bundestag

An elected candidate shall attain membership of the Bundestag upon receipt by the appropriate Returning Officer of his letter of acceptance within the period and in the form prescribed in § 41, subsection (2) or § 42, subsection (3), but

not before the expiration of the period of legislature of the last Bundestag and, in the case of § 44, subsection (4), not before the withdrawal of the member elected as a result of the original election. If the elected candidate fails to send or does not in due form send a letter of acceptance before the expiration of the legally prescribed period, the election shall be considered accepted as at the time of expiration. An acceptance under reserve shall count as a refusal. Statements of acceptance and refusal shall be irrevocable.

§ 46 Loss of Membership of the Bundestag

(1) A deputy shall lose his or her membership of the Bundestag

1. if the attainment of membership is invalid,
2. if the election result is newly established,
3. if he or she loses one of the prerequisites for permanent eligibility,
4. by resigning,
5. if the Federal Constitutional Court finds in accordance with Article 21, paragraph 2, second sentence of the Basic Law that the political party or party section of which the deputy is a member is unconstitutional.

Any grounds for loss of membership as may be laid down in other statutory provisions shall not be affected.

(2) A deputy whose election in the constituency is invalid shall nevertheless retain his or her membership of the Bundestag if he or she was at the same time elected on a Land list but was disregarded pursuant to § 6, subsection (4), third sentence.

(3) Resignation shall only be effective if it is declared in writing to the President of the Bundestag, to a German notary having his seat within the area of application of this Law, or to a member of a German mission abroad who is authorised to authenticate documents. The deputy shall be required to transmit to the President of the Bundestag the declaration of resignation attested by a notary or presented to a mission abroad. The resignation shall be irrevocable.

(4) If a party or section of a party is declared unconstitutional by the Federal Constitutional Court in accordance with Article 21, paragraph 2, second sentence of the Basic Law, the deputies shall lose their membership of the Bundestag, and their successors on the list shall lose their candidacy, if they have been members of that party or party section during the period between the filing of the application (§ 43 of the Law on the Federal Constitutional Court) and the pronouncement of the decision (§ 46 of the Law on the Federal Constitu-

tional Court). To the extent that deputies having lost their membership in accordance with the first sentence above were elected in constituencies, the election of a constituency deputy shall be repeated in such constituencies, § 44, subsections (2) to (4) being applied mutatis mutandis; in these cases the deputies who have lost their membership in accordance with the first sentence above shall not be allowed to appear as candidates. If deputies having lost their membership in accordance with the first sentence above were elected on the basis of a Land list of the party or section of a party declared unconstitutional, their seats shall remain vacant. Otherwise § 48, subsection (1) shall be applicable.

§ 47 Decision on Loss of Membership

(1) A decision on loss of membership unter § 46, subsection (1) shall be made

1. in the case of No. 1, under the scrutiny procedure,
2. in the case of Nos. 2 and 5, by a resolution of the Council of Senior Members of the Bundestag,
3. in the case of No. 3, if eligibility has been lost as a result of a judicial decision, by a resolution of the Council of Senior Members of the Bundestag, otherwise under the scrutiny procedure,
4. in the case of No. 4, by the President of the Bundestag issuing a confirmation of the declaration of resignation.

(2) If a decision on the loss of membership is made under the scrutiny procedure, the deputy concerned shall withdraw from the Bundestag as soon as the decision shall become legally effective.

(3) If the Council of Senior Members or the President of the Bundestag decides on the loss of membership, the deputy concerned shall withdraw from the Bundestag as soon as the decision has been taken. The decision shall be taken ex officio without delay. Within two weeks after the decision has been served upon him or her, the deputy concerned may apply for a decision on the loss of membership to be taken by the Bundestag under the scrutiny procedure. Such decision shall be served upon the applicant in accordance with the provisions of the Law on the Serving of Documents in Administrative Procedure.

§ 48 Appointment of Successors from the Lists and Replacement Elections

(1) If an elected candidate dies or refuses to accept election, or if a member dies or subsequently withdraws from the Bundestag for any other reason, the vacant seat shall be filled by an appointment from the Land list of that party

for which the departed member stood at the election. In the selection of the successor those candidates on the list who have subsequently to the drawing up of the Land list resigned from the party concerned shall not be taken into consideration. If the list is exhausted, the seat shall remain vacant. The decision as to which candidate from the list is to succeed to the seat shall be taken by the Land Returning Officer. § 42, subsection (3) and § 45 shall apply mutatis mutandis.

(2) If the departed member has been elected as the constituency member for a group of voters or a party which had not been allowed to submit a Land list in the Land, a replacement election shall be held in the constituency. The replacement election must be held not later than sixty days after the seat has become vacant. There shall be no replacement election if it is certain that a new Bundestag will be elected within six months. The replacement election shall be conducted according to the general regulations. The election date shall be determined by the Land Returning Officer. § 41, subsection (2) and § 45 shall apply mutatis mutandis.

Ninth Chapter
Final Provisions

§ 49 Contestation

Any decisions and measures directly affecting the electoral procedure may only be contested by means of the legal remedies provided by this Law and the Federal Election Regulations and by way of the scrutiny procedure.

§ 49a Irregularities

(1) Any person who

1. contrary to the provisions of § 11 refuses an honorary post without sufficient reason or evades the responsibilities of such office without sufficient excuse or
2. contrary to the provisions of § 32, subsection 2, publishes the results of opinion polls of voters decisions after voting before the time prescribed for voting has expired,

shall be guilty of an irregularity.

(2) An irregularity pursuant to subsection 1 (1) may carry a fine of up to 1,000 Deutsche Mark, and an irregularity pursuant to subsection 1 (2) a fine of up to 100,000 Deutsche Mark.

(3) The administrative authority within the meaning of § 36, subsection 1 (1), of the Law on Irregularities is

1. for irregularities pursuant to subsection 1 (1)
   a) the Constituency Returning Officer, if a person eligible to vote unjustifiably refuses to accept the office of Electoral Officer, Deputy Electoral Officer or member of the Electoral Board or County Electoral Committee or evades the responsibilities of such office without sufficient reason,
   b) the Land Returning Officer, if a person eligible to vote refuses to accept the office of a member of the Land Electoral Committee or evades the responsibilities of such office without sufficient reason,
   c) the Federal Returning Officer, if a person eligible to vote refuses to accept the office of member of the Federal Electoral Committee or evades the responsibilities of such office without sufficient reason;
2. for irregularities pursuant to subsection 1 (2), the Federal Returning Officer.

§ 50 Costs of the Election

(1) The Federation shall reimburse the Laender for their own and their communes' (commune associations') necessary expenditure arising from the election by the payment of a fixed amount for each person entitled to vote which shall be determined in relation to the size of each commune.

(2) The fixed amount shall be determined by the Federal Minister of the Interior with the consent of the Bundesrat. In determining the amount, current staff and material costs and costs for the use of premises and facilities belonging to the Laender and communes (commune associations) shall not be taken into consideration.

§ 51 Election Statistics

(1) The results of the German Federal Parliamentary Elections shall be statistically analysed.

(2) In polling districts to be selected by the Federal Returning Officer in consultation with the Land Returning Officers and the Land Statistical Offices, statistics shall also be worked out on the sex and age of the persons entitled to vote and of the voters, taking into consideration the votes cast for the individual nominations. The division of the poll according to age-group and sex shall only be admissible if the secrecy of each vote cast is fully preserved.

§ 52 Federal Election Regulations

(1) The Federal Minister of the Interior shall issue the Federal Election Regulations necesary for the implementation of this Law. He shall in particular include therein statutory provisions regarding

1. the appointment of Returning Officers and Electoral Officers, the formation of Electoral Committees and Electoral Boards, and the activities, quorum and procedure of the electoral bodies,
2. appointments to honorary electoral posts, the reimbursement of expenses to persons holding honorary electoral posts, and the procedure for imposing fines,
3. the hours of the poll,
4. the delimitation of polling districts and their notification to the public,
5. the various preconditions for entry in the voters' registers, the keeping of such registers, their public display, their correction and closing, objections to, and complaints against, a voters' register, and the notification of persons entitled to vote,
6. the various preconditions for the granting of polling cards and their issuance, and regarding objections to, and complaints against, the refusal of polling cards,
7. proof that the preconditions for possessing the right to vote are met,
8. the procedure to be followed according to § 18, subsections (2) to (4),
9. the submission, content and form of nominations and relevant documents, their examination, the elimination of errors and defects, their acceptance, complaints against decisions of the Constituency Electoral Committee and the Land Electoral Committee, as well as the publication of nominations,
10. the form and content of the ballot paper, and regarding the voting envelope,
11. the provision, furnishing and notification to the public of the polling stations as well as devices ensuring the secrecy of the poll and voting booths,
12. the casting of votes, including special arrangements to meet special conditions,
13. the postal ballot,
14. voting in hospitals and nursing institutions, monasteries and convents, residential premises and areas closed by sanitary police, as well as social therapy and penal institutions,
15. the establishment of the election results, their onward reporting to the appropriate authorities, their public announcement, and the notification of the successful candidates,

16. the conduct of by-elections, repeat elections and replacement elections as well the appointment of successors from the lists of candidates.

(2) The statutory provisions shall not require the consent of the Bundesrat.

(3) The Federal Minister of the Interior is authorised, in the event that the Bundestag is dissolved, to shorten the periods prescribed in the Federal Electoral Law and in the Federal Election Regulations by means of an ordinance without the consent of the Federal Council.

§ 53 Transitional Provisions

As long as, with regard to Article 2 of the Agreement on Relations between the Federal Republic of Germany and the Three Powers of 23 October 1954 (Federal Law Gazette 1955 II, p. 305) in conjunction with the Letter of the three High Commissioners in the version of 23 October 1954 (Federal Law Gazette 1955 II, p. 500), there are obstacles in the way of the full application of this Law to the Land Berlin, the following provisions shall apply:

1. The number of members of the Bundestag, as laid down in § 1, subsection (1), shall be reduced to 496, and the number of members to be elected by constituency nominations, as laid down in § 1, subsection (2), shall be reduced to 248.
2. To these shall be added 22 deputies of the Land of Berlin in accordance with the following provisions:
   a) The Chamber of Deputies of Berlin shall elect the deputies, together with a sufficient number of reserve deputies, on the basis of the composition of the Chamber of Deputies at the time of the Bundestag election. The political parties and parliamentary groups represented in the Chamber of Deputies at the said time shall make nominations accordingly.
   b) The persons elected shall attain membership of the Bundestag upon their declaration of acceptance to the President of the Chamber of Deputies of Berlin. The President shall report the results of the election, enclosing the declarations of acceptance, to the President of the Bundestag without delay.
   c) Eligibility to stand for parliament, and loss of membership, shall otherwise be governed mutatis mutandis by the provisions of this Law. If a member vacates his seat the next reserve deputy shall take his place. He must belong to the same party as the previous deputy at the time of his election.

§ 53a Time Limits and Dates

The time limits and dates provided for in this Law may not be extended or changed on account of the fact that the last day of the period in question or a particular date falls on a Saturday, Sunday, a statutory or state-protected public holiday. A reversal to the previous state shall be precluded.

§ 54 Berlin Clause

This Law shall also be applicable in the Land of Berlin in accordance with the provisions of § 13, subsection (1) of the Third Transitional Law of 4 January 1952 (Federal Law Gazette I, p. 1). Statutory ordinances issued by virtue of this Law shall apply in the Land of Berlin in accordance with § 14 of the Third Transitional Law.

§ 55 Extension of the Area of Application of this Law

This Law shall be put into force in other parts of Germany after their accession in accordance with Article 23 of the Basic Law. The date of entry into force and the division into constituencies shall be determined by Federal law.

§ 56* Entry into Force

This Law shall enter into force fourteen days after its promulgation.* It shall first be applied to the election of the third Bundestag.

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* This provision applies to the entry into force of the Federal Electoral Law in the original version of 7 May 1956. The date of entry into force of subsequent amendments is indicated in the laws specified in the preceding notice.

The constituencies for the election for the German Bundestag are published in the Federal Law Gazette.

Bibliography

ABC of the 1983 Federal Election, prepared by the Federal Returning Officer

Hübner, Emil	Wahlsysteme (Election Systems),Issue No. 28 published by the Centre for Civic Education, Bavaria, 3rd ed., 1972
Jesse, Eckhard	Wahlrecht zwischen Kontinuität und Reform (Electoral Law between Continuity and Reform) 1949–83, Droste Verlag, Düsseldorf, 1985
Jüttner, Alfred	Wahlen und Wahlrechtsprobleme (Elections and Election Law Problems), vol. 137 in the paperback series Geschichte und Staat, Günter Olzog Verlag, Munich, 1970
Pointner, Manfred	Bundeswahlrecht (The Federal Electoral Law), commentary published by Verlag für Verwaltungspraxis Franz Rehm, Munich, 1980
Ridder, Wigand	Die Einteilung der Parlamentswahlkreise (Constituency Divisions), vol. 17 in the series Allgemeines Völkerrecht, issued by the Institut für Völkerrecht, University of Göttingen, 1976
Sasse, Christoph/ Georgel, Jacques/ Hand, Geoffrey	Das Wahlrecht der Neun (The Electoral Law of the Nine) Nomos-Verlagsgesellschaft, Baden-Baden, 1979
Schreiber, Wolfgang	Handbuch des Wahlrechts zum Deutschen Bundestag (Handbook of Federal Law on Elections for the German Bundestag), vol. 1, Commentary on the Federal Electoral Law, 3rd ed., Carl Heymanns Verlag KG, Cologne, 1986
Schweinoch, Joachim Simader, August	Bundeswahlgesetz, Bundeswahlordnung (Federal Electoral Law, the Federal Electoral Regulations), 10th ed., Kommunalschriften-Verlag J. Jehle, Munich, 1983
Seifert, Karl-Heinz	Bundeswahlrecht (Federal Electoral Law, a commentary), 3rd ed., Verlag Franz Vahlen, Munich, 1976
Woyke, Wichard/ Steffens, Udo	Stichwort: Wahlen (Theme: Elections), Leske-Verlag und Budrich GmbH, Leverkusen, 1984